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EXAMINER
POLLACK, MELVIN H

ART UNIT	PAPER NUMBER
2145	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Office Action Summary	10/791,311	RODGERS ET AL.
	Examiner	Art Unit	
	MELVIN H. POLLACK	2145	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>21 November 2007</u>.

2a)☒ This action is FINAL.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-7,9-18 and 21-27</u> is/are pending in the application.

     4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-7,9-18 and 21-27</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on <u>01 March 2004</u> is/are: a)☒ accepted or b)☐ objected to by the Examiner.

     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

     a)☐ All b)☐ Some * c)☐ None of:

        1.☐ Certified copies of the priority documents have been received.

        2.☐ Certified copies of the priority documents have been received in Application No. _____.

        3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

     * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____

5)☐ Notice of Informal Patent Application

6)☒ Other: <u>see attached office action</u>.

DETAILED ACTION

Response to Arguments

1.   Applicant's arguments filed 28 January 2008 have been fully considered but they are not persuasive. An analysis of the arguments is provided below.

2.   Applicant has amended original claim 8 into claim 1, and has amended a broader version of original claims 19 and 20 into all independent claims.

3.   For claims 1, 14, 17, 24, and 27, applicant argues that the combination of Pandya, Matsubara and Cain does not expressly disclose that the eligibility policy is based on amount of time since the last successful transmission. Cain teaches a time division multiple access scheme (TDMA), wherein time slots have to be scheduled. In particular, the scheduling occurs in part due to the time formation, wherein a successful signal is followed up by a delay (col. 1, line 25 – col. 2, line 55). If the method is more than time-division multiplexing plus error correction, the applicants need to amend away from this aspect.

4.   For claims 1, 14, 17, 24, and 27, applicant argues that the combination of Pandya, Matsubara and Cain does not expressly disclose credits regarding client eligibility, as opposed to client billing. Matsubara teaches the tracking of communications within tables of communications. While not expressly called credits, they are a functional equivalent in that they determine the transmission of data based on priority and on prior failures.

5.   For claim 9, applicant argues that the combination of Pandya, Matsubara and Cain does not expressly disclose a specific combination of variables. There is no mention of variables within claim 9.

6.   For claims 11 and 26, applicant argues that the combination of Pandya, Matsubara and

Cain and Suni does not expressly disclose computation of an earliest elapsed time E when the

client will be eligible to receive the feed data. Suni teaches the development of a maximal rate

envelope, an equation of functional equivalency that provides the same result (col. 9, line 1 - col.

11, line 25)

7.   For claims 13, 22, 23, and 25, applicant argues that the combination of Pandya,

Matsubara and Cain and Suni does not expressly disclose equations for calculating data credits to

adjust the bandwidth. Suni teaches these equations (col. 15, line 10 - col. 19, line 35).

8.   For claims 15 and 16, applicant argues that the combination of Pandya, Matsubara and

Cain does not expressly disclose the handling of high priority data by ignoring eligibility and

taking resources from lower-priority communications. Such a condition is prima facie inherent

in any QoS system - by definition, higher priority communications are supposed to override

other eligibility mechanisms. Pandya does in fact teach this limitation (col. 7, line 63 – col. 8,

line 10).

9.   For claim 18, applicant argues that the combination of Pandya, Matsubara and Cain does

not expressly disclose determining whether a transmission was successful. Pandya teaches this

limitation (col. 15, lines 15-50).

10.   Therefore, the rejection is maintained for the reasons above. This rejection is final.

Claim Rejections - 35 USC § 103

11.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
> such that the subject matter as a whole would have been obvious at the time the invention was made to a person

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

12.   Claims 1-7, 9, 14-18, 24, and 27 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Pandya et al. (7,260,635) in view of Matsubara et al. (2004,0008688) and Cain

et al. (7,085,290).

13.   Pandya teaches a method and system (abstract) of enforcing bandwidth limitations via

QoS techniques (col. 1, line 1 – col. 5, line 15) for local and wireless networks (col. 5, line 15 –

col. 8, line 10). In particular, a control system permits or prevents transmission of requested feed

data based on client eligibility (col. 8, line 10 – col. 33, line 5).

14.   Pandya does not expressly disclose reimbursement for previously lost data. Matsubara

teaches a method and system (abstract) of billing in QoS systems (Paras. 1-48) that specifies bill

handling and reimbursement of such systems (Paras. 49 – 151). At the time the invention was

made, one of ordinary skill in the art would have added the features in order to ensure billing

fairness to a user (Para. 15).

15.   Pandya and Matsubara do not expressly disclose the timestamp-based eligibility system.

Cain teaches a method and system (abstract) of providing QoS methods to mobile networks (col.

1, line 1 – col. 5, line 15) that includes these limitations (col. 5, line 15 – col. 11, line 60). At the

time the invention was made, one of ordinary skill in the art would have added Cain in order to

further QoS functionality (col. 2, lines 50-60).

16.   Claims 10-13, 21-23, 25, and 26 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Pandya, Matsubara and Cain as applied to claims 1, 17, and 24 above, and

further in view of Suni (7,068,660).

17.   Pandya, Matsubara and Cain do not expressly disclose the particular bandwidth-
limitation formulae listed in the claims. Suni teaches a method and system (abstract) of a QoS-
type system (col. 1, line 1 – col. 9, line 60) that includes the various algorithmic methods of
bandwidth limiting decisions (col. 9, line 60 – col. 28, line 40). At the time the invention was
made, one of ordinary skill in the art would have added Suni in order to increase the efficiency
and certainty of the QoS systems (col. 1, lines 35-60).

Conclusion

18.   The prior art made of record and not relied upon is considered pertinent to applicant's
disclosure. They regard further teachings on QoS for mobile systems, and on background
teachings of media streaming, bandwidth monitoring, and billing systems.

11.   **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time
policy as set forth in 37 CFR 1.136(a).

        A shortened statutory period for reply to this final action is set to expire THREE
MONTHS from the mailing date of this action. In the event a first reply is filed within TWO
MONTHS of the mailing date of this final action and the advisory action is not mailed until after
the end of the THREE-MONTH shortened statutory period, then the shortened statutory period
will expire on the date the advisory action is mailed, and any extension fee pursuant to 37
CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,
however, will the statutory period for reply expire later than SIX MONTHS from the mailing
date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELVIN H. POLLACK whose telephone number is (571)272-3887. The examiner can normally be reached on 8:00-4:30 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Cardone can be reached on (571) 272-3933. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. H. P./   Melvin H Pollack
Examiner, Art Unit 2145   Examiner
28 January 2008   Art Unit 2145

                                                        /Jason D Cardone/
                                        Supervisory Patent Examiner, Art Unit 2145